

COURT FINDINGS IN BIRDSALL CASE.

The Accuser Was a Gentle and
The Accused Was a Member
Of the Church.

OFFENSE A BROKEN CONTRACT.

Conclusion Shows That Action of
Local Church Authorities Was Cor-
rect—The Case Reviewed.

As the notorious Birdsall case in Sevier county has been so grossly mis-represented in public print and before the committee on Privileges and Elections in the U. S. Senate, we publish in full the decision rendered by the District court of the Sixth Judicial District of this State, September 25, 1905. As the court has revived the entire case, both as the matter was presented before the Church tribunals and in a civil suit, we need not recapitulate the story of the contention, except to show that the case before the Church courts was simply a charge of un-Christianlike conduct against Cora Birdsall, which was decided against her.

The accuser was a "Gentile" and she was a member of the "Mormon" Church. Her offense consisted of refusing to fulfill an agreement to convey to the complainant, a piece of land which he had purchased and cultivated, and which was included in a home-estate entry, afterwards filed upon by Miss Birdsall. The only equitable thing for her to do was to fulfill her agreement. She was required to do this or be excommunicated from the Church. Under persuasion from her father she refused to comply and was cut off the Church. Realizing her folly and wrong, she subsequently repented and was received into the Church by baptism. Her mind afterwards became unimpaired, and her father, whose actions had been unimpaired, was commended upon by the court, entered suit for the recovery of the land on the ground that she was incompetent to make the deed. The evidence before the court showed clearly that his statements were untrue, and the court refused to comply with the demand.

The chief point in this contention is that the Church did not interfere in any way with the courts or the laws of the land. It dealt with a Church member on Church discipline. It rendered judgment against a "Mormon" in favor of a "Gentile." As we have explained before, the entertainment of a complaint by a non-member against a member of the Church was out of the regular order of Church discipline. But it was simply a question of un-Christianlike conduct of which the district court declares the deed of conveyance to be null and void, and all other acts of the church authorities in a false light are unworthy of any decent journal or individual, but fully in accord with the course of those who are engaged in un-Christianlike business.

In the district court of the Sixth Judicial District, State of Utah, county of Sevier.

Cora Birdsall, vs. Isaac Bird, plaintiff, vs. James E. Leavitt and Hulda Leavitt, defendants.

In deciding this case, in order that the parties may have a clear understanding of the position that the court takes, it is necessary to go into the history of the case as presented here in court by both the plaintiff and the defendant.

Before doing so I will say that I have looked out the complaint as amended, as well as the amended answer, and I thoroughly understand the issues in the case. I have scanned carefully the testimony as presented and the evidence as presented in a careful and considerate manner, giving due weight to that part which I think entitled to weight, and leaving out all that I think is immaterial and has no bearing upon the case.

HISTORY OF THE CASE.

The history of the case, as I understand it, is substantially this: Away back as far as the year 1880, or perhaps a little before that time, it appears from the evidence that this defendant was making some sort of claim to the land in question, or in other words, having a claim of some kind, by purchasing improvements of a party whom he seemed to recognize as having some sort of squatter's right. About this time the father of Cora, who brings this suit, settled upon the land, and it appears from all that can be gleaned from the evidence that they recognized some sort of right, although I believe the defendant having recognized any rights of the plaintiff to the land or

RHEUMATISM COMMON IN SUMMER

The time to get rid of Rheumatism is in Summer while the blood is endeavoring to purge itself of all poisons and impurities, and the skin is active, with the pores and glands open and able, in this way, to assist in the elimination.

Columbus, O., 1355 Mt. Vernon, Ave. Six years ago I had a severe attack of Rheumatism, and the doctors told me I had no chance. They said I would never get well and nothing they could do would help me. Finally I got of S. S. S. My knee and elbow joints were swollen terribly, and at one time I could not close them when opened. I was getting discouraged, you may say, when I began S. S. S. But as I saw it was helping me I continued it, and today I am a sound, well man and have never had a return of the disease.

R. H. CHAPMAN.

The inactivity of the Liver, Kidneys and Bowels causes the refuse matter to remain in the system, which, coming in contact with the different acids of the body, forms uric acid to be absorbed by the blood and distributed to the different joints and muscles, producing the pains, inflammation and other distressing symptoms of Rheumatism. The wandering of the poison is still in the blood and he should lose no time in getting it out. S. S. S. neutralizes the acid and makes the blood rich and pure. It tones up every organ and cures the disease permanently. S. S. S. contains no harmful minerals to disorganize the system, but while curing the disease builds up the system.

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to the improvements. As time went on it seems to ripen, however, into what was recognized there as some sort of right, and Mr. Birdsall, the father of Cora, made an entry. He relinquished finally in favor of his daughter Cora, who was a single and unmarried woman of the proper age to make an entry, and she filed a homestead entry upon the land. There was some dispute, as it appears, between Cora and the defendant, Mr. Leavitt, which, after she had proved up, grew to such an extent that Mr. Leavitt refused to settle that dispute by taking it into the Church courts. It must be remembered, however, that Mr. Leavitt was not at that time nor at any time since, a member of the Mormon Church, but was a non-member. The defendant Leavitt finally prefers a charge against Cora in the Bishop's court of the Monroe ward, charging her with un-Christianlike conduct, and asks the complainant that was filed in the Bishop's court has been introduced as evidence in this case by the plaintiff. I shall refer to it, as it becomes a part of the record in this case and a part of the decision. In that complaint Mr. Leavitt claims sixty acres of meadow and pasture land. Claims that he bought it of Frank W. Farnsworth, and that it was in the hands of the late John A. Jericho, for which he paid money; and he also claims that he had fenced and improved it, and possessed a large part of the land from 1850 to 1880, and that by reason of Cora's action he has been damaged to the amount of \$500 by being deprived of the use of the land. He, therefore, asks that the Bishop's court, adjudicate the matter between them and deal out such equities in the case as they see fit.

DIVIDING ISSUES.

Later on the issues between them were joined in the Bishop's court, the evidence was taken, and the Bishop's court decided that Miss Cora Birdsall was in effect guilty of un-Christianlike conduct, and that she was guilty of un-Christianlike conduct of which the district court declares the deed of conveyance to be null and void, and all other acts of the church authorities in a false light are unworthy of any decent journal or individual, but fully in accord with the course of those who are engaged in un-Christianlike business.

In the district court of the Sixth Judicial District, State of Utah, county of Sevier.

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Before doing so I will say that I have looked out the complaint as amended, as well as the amended answer, and I thoroughly understand the issues in the case. I have scanned carefully the testimony as presented and the evidence as presented in a careful and considerate manner, giving due weight to that part which I think entitled to weight, and leaving out all that I think is immaterial and has no bearing upon the case.

WOMAN EXCOMMUNICATED.

That, I take it, is the history of this case so far as the Church courts have been concerned, except that on June 19, 1905, Cora Birdsall was excommunicated from the Church of Jesus Christ of Latter-day Saints for failure to comply with the decision of the First Presidency of the Church in the case referred to.

On the 11th day of June, 1905, Cora Birdsall executed a warranty deed, conveying the land in controversy to James E. Leavitt. The deed was delivered to James E. Leavitt by the sister of Cora Birdsall, and \$100 in cash was paid by the defendant in this case in accordance with the decision of the Church court heretofore referred to, as it was decided that upon delivery of the deed the land in question was made Cora Birdsall's. Mr. Leavitt should pay her \$100. The \$100 was paid by Mr. Leavitt.

It will be remembered that since all this took place, and on the 3rd day of August, 1905, Miss Birdsall was declared to be insane by this court, and was sent to the State Mental hospital at Provo, in this state, for treatment, and there she remained until the 1st of September, when she was released, and she is her legal representative, brings this action, and asks this court to declare the deed referred to void, and that she recover the premises in question, and that the defendant be required to render an accounting to the court and the plaintiff for the rents, issues and profits of said property, while in their possession, and the cost of suit, and such other relief as the court seems just and equitable.

THE COMPLAINT.

The complaint sets out that at the time the deed was executed, Cora Birdsall was wholly incompetent and incapacitated to care for herself or property and that fact was at all times therein mentioned and known by the defendant, and that notwithstanding said knowledge of plaintiff's insanity on the part of the defendant, said defendant fraudulently taking advantage of the plaintiff's incapacity, procured her to sign the deed in question, and that Cora Birdsall was always incompetent and incapable of making said deed or ratifying the same or binding herself by the same, and that plaintiff alleges that she was made insane, incompetent and insane, by the actions of the defendant in causing the plaintiff to be disestablished from the "Mormon" Church, and that by reason of such severance from the "Mormon" Church, undue influence was resorted to by the defendant, James E. Leavitt and his agents to induce plaintiff to so deed the said land to the defendant, representing to plaintiff that if she would deed said land to defendant, she said plaintiff, would be re-instated in the "Mormon" Church, and that plaintiff, who was sane and of legal age, was so induced and made to deed the land to the defendant, and was so signed by her while she was unconscious of the act done and unable to give legal consent thereto; and

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Before the first flush of fever, comes lassitude, headache, general nervous symptoms of having taken cold—if at this time you act quickly—take a few doses of Dr. Humphreys' Specific "Seventy-seven," will restore the checked circulation, start the blood coursing through the veins and break up the cold. "77" also breaks up colds that hang on. "77" cures Grip, Influenza, Catarrh, Coughs, Bronchitis and Sore Throat. At Druggists 25c, or mailed. Write for Medical Book sent free.

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all that done by means of the fraudulent misrepresentation and undue influence practiced and exerted as aforesaid.

It appears from the pleadings that there are three grounds upon which the defendant seeks to have the deed set aside. One is that undue influence was used by the defendant in which Cora Birdsall was induced to sign the deed. Another is that there was no consideration; and the third is that Cora was insane and incompetent to make the deed at the time the deed was executed. There was no demurrer filed setting up that, or more causes of action were improperly introduced. Therefore I shall take the complaint as it stands and consider it.

ABOUT UNDE INFLUENCE.

I shall consider first the question of undue influence. There was not one word of testimony that I can find in this record that even intimates that Mr. Leavitt himself ever used any influence with Cora Birdsall to get her to sign the deed. The contention, however, is that the Elders of the "Mormon" Church who were called in to see Cora when she was sick used an undue influence over her to get her to abide by the decision. The witness Elsie M. Taylor testified that she herself went after the Elders; that she came and administered to Cora, and that afterwards they were somewhat better. She and her father, who is the legal representative of Cora Birdsall at this time, and her mother, testified that on the 18th and 19th of October, 1905, Cora was insane and didn't know what she was doing at the time the deed was signed. As against that testimony there is the testimony of Mr. Bean, Bishop of the Monroe ward, John Christensen, and S. G. Clark of Richfield, Utah, who visited Cora on the day the deed was signed and who conversed with her about it; and from their testimony it appears that nothing that most troubled her was that she could not get back into the Church without going to the Twelve Apostles, and it seemed to be her greatest anxiety to comply with the decision of the Church courts and deed to Mr. Leavitt the land, but as she understood that she could not do it without going to the Twelve Apostles, she consulted with them, and they decided that it was not necessary for her to see the Twelve Apostles, but that she could comply with the decision if she so desired, without going to them, and when it was made plain that she could do that, she seemed willing to deed the land; and it seems to me from all the evidence in this case that if Cora Birdsall had been sane and of legal age, she would have deeded the land in question to defendant long before she did; but it appears that if there was any influence used with her whatever in this case, it was used by her parents to prevent her from deeding the land. Neither is there any testimony in this case to show that the

VISIT OF THE ELDERS.

Elders who visited her the day the deed was signed used any influence whatever to get her to sign the deed. What over they did was to assist her in carrying out her own desires, and the only way that the court could possibly hold in this case that undue influence was used would be to hold that by the actions of the Church courts dealing with the case it was undue influence per se. Therefore if it were held by this court, to be undue influence per se it simply means that any compliance by individuals with the order or church would be null and void, and as parties who belong to orders, organizations and churches are to obey the laws of the land, and the respective organizations—it is a matter of option with them—and if they do so they do it voluntarily unless the order, organization or church by its officers, uses coercion and induces the parties against their will to comply with any requirement of such order or organization, which was not done in this case. All churches, orders, and fraternities, and all other organizations, have a right to discipline their members and when any member of said order or church organization does any act that is unbecoming and against the regulation and by-laws of the church, they have a right to handle such person so far as their fellowship in such order or church is concerned. The members, however, are under no legal obligations to obey such regulations or to obey their respective orders or church organizations, and if they do so voluntarily, the fact that they did it by reason of such adjudication of such order or organization, does not make it undue influence per se; and if the plaintiff's theory in this case should prevail in this state under the testimony as it stands it would mean that many transactions that have been made in this state would be null and void and there would be no end to litigation over such matters. There is no contention by the plaintiff in this case that Mr. Leavitt himself took any part in influencing Miss Birdsall. Their contention is that the "Mormon" Church by reason of its entertaining this case in its church courts acted as the agents of Mr. Leavitt and by reason of its decision, which was against her, compelled her to comply and therefore it was the same as if Mr. Leavitt had done it himself. But as the evidence shows that there was no persuasion before stated, that contention cannot be sustained.

AS TO INSANITY.

As to the question of insanity, the burden of proof is to the effect that when she signed the deed she knew what she was doing. She talked over the consideration, which was to be \$100. However, according to the testimony that has been introduced in this case, that \$100 was not all of the consideration. Mr. Leavitt's first claim was more than 40 acres of land, and it appears that a concession was made on his part. Some improvements were made and such like and to some extent must have been recognized at least by Mr. Birdsall, the legal representative of Cora, and the testimony of Virginia Bean, who had been a schoolmate with her, Simon Christensen, John W. Coons, G. W. Coons, who were all personally acquainted with her, was to the effect that she knew what she was doing at the time the deed was signed—understood fully what she was doing—so that as to the question of insanity and the want of consideration it has not been sustained by the evidence in this case. It appears that Mr. Birdsall, the representative of Cora who is now

suing to cancel this deed, also himself and his wife accepted a deed from Cora made a day or two later than the deed in question, which they never have returned. They hold it at the present time and have been occupying the land. It weakens materially their testimony; for certainly if she was competent to give a deed to them a day or so later than the deed in question, it is a controversy, she was competent at the time she signed the deed in question. There seems to be some motive on the part of Mr. Birdsall, the legal representative of Cora in this matter. The fact that he held the land, looks rather bad on his part. Therefore the issues in this case are for the defendant and the attorneys will prepare findings in accordance with the views that I have expressed.

State of Utah, County of Sevier, ss. I, George M. Cope, official stenographer in and for the Sixth Judicial District of the State of Utah, do hereby certify that the foregoing is a full and correct copy of the official record in the above entitled case and that the above decision was taken down by me as official stenographer as it was rendered by Judge Chidister at the termination of the above named case.

GEO. M. COPE,
Official stenographer in and for the Sixth Judicial District, State of Utah.

Grave Trouble Foreseen.

It needs but little foresight, to tell, that when your stomach and liver are badly affected, grave trouble is ahead, unless you take the proper medicine for your disease, as Mrs. John A. Young, of Clay, N. Y., did. She says: "I had neuralgia of the liver and stomach, my heart was weakened, and I could not eat. I was very bad for a long time, but in Electric Bitters, I found just what I needed, for they quickly relieved and cured me." Best medicine for weak work. Hold under guarantee by Z. C. M. I. Drug Dept., at 50c a bottle.

Old Dutch china at Z. C. M. I. See it.

OCTOBER WEATHER.

What it Has Been in Salt Lake for the Last Thirty-one Years.

United States department of agriculture, weather bureau. The following data, covering a period of 31 years, have been compiled from the weather bureau records at Salt Lake City, Utah. They are issued to show the conditions that have prevailed, during the month in question, for the above period of years, but must not be construed as a forecast of the weather conditions for week work, or for the month of October for 21 years:

TEMPERATURE.

Mean or normal temperature, 33 degrees. The warmest month was that of 1875, with an average of 38 degrees. The coldest month was that of 1883, with an average of 46 degrees. The highest temperature was 56 degrees, on Oct. 6, 1889.

The lowest temperature was 22 degrees on October 20, 1878. The earliest date on which first "killing" frost occurred in autumn, Sept. 27. Average date on which first "killing" frost occurred in autumn, Oct. 8. Average date on which last "killing" frost occurred in spring, April 23. The latest date on which last "killing" frost occurred in spring, June 15.

PRECIPITATION—RAIN OR MELTED SNOW.

Average for the month, 1.50 inch. Average number of days with 0.1 of an inch or more, six. The greatest monthly precipitation was 3.50 inches in 1889. The least monthly precipitation was .24 inch in 1885. The greatest amount of precipitation recorded in any 24 consecutive hours was 1.91 inch on Oct. 15, 1889. The greatest amount of snowfall recorded in any 24 consecutive hours (record extended to winter of 1884-85 only) was 6.5 inches on Oct. 29, 1900.

CLOUDS AND WEATHER.

Average number of clear days, 15; partly cloudy days, 9; cloudy days, 7.

WIND.

The prevailing winds have been from the south and southwest. The average hourly velocity of the wind is 3.5. The highest velocity of the wind was from northwest on Oct. 11, 1877, also on Oct. 19, 1900.

Station: Salt Lake City, Utah.
Date of issue: Sept. 1905.
R. J. HYATT,
Local Forecaster, Weather Bureau.

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IF YOU ARE SICK AND IN DOUBT AS TO WHAT YOUR TROUBLE REALLY IS—IF YOU HAVE DOCTORED IN VAIN AND TRIED EVERY MEDICINE YOU KNOW OF WITH LITTLE OR NO RELIEF, THE TROUBLE MUST BE WITH THE "DIAGNOSIS." DON'T LET THIS OPPORTUNITY PASS TO LEARN FREE OF CHARGE EXACTLY WHAT YOUR DISEASE IS AND WHAT CAN BE DONE FOR YOU. CALL ON OR WRITE DRS. SHORES & SHORES AND THESE EXPERT SPECIALISTS WILL EXAMINE AND ADVISE YOU ABSOLUTELY FREE.



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CATARH—Deafness, Nose and Throat Troubles, Eye and Ear Diseases, Bronchitis and Lung Troubles, Asthma, Stomach, Liver and Kidney Diseases, Scabies and Rheumatism, Diseases of the Bowels, Piles, Fistula and Rectal Troubles, Gout, (or Big Neck), Blood Diseases, Typhoid, Hay Fever, Hysteria, Epilepsy, Insomnia, etc., and all curable Nervous, Private and Chronic Diseases.

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Difficult and Obscure Cases Especially Invited.

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DRS. SHORES WILL POINT OUT THE SORE SPOTS, and will tell you FREE exactly what your ailment is and whether you can be cured. If your case is beyond the power of Medical science to cure, Drs. Shores will advise you free, but will not accept your case for treatment. DRS. SHORES FOR MANY YEARS HAVE MADE IT A FIXED RULE TO TAKE NO INCURABLE CASES.

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DR. G. W. SHORES.

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All next week we will have a great run on Boys' Wearables. We shall give special and unusual bargains. We bought at our own price—large lines of boys' merchandise—and we are going to give our patrons a

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WE MENTION A FEW OF OUR SPECIAL PRICES:

\$2.00 Suits, special at.....\$1.55	15c Stockings at.....\$1.30	15c Handkerchiefs.....\$1.30
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\$3.00 Suits, special at.....\$2.25	25c Neckwear at.....\$1.30	Rubber Collars.....\$1.30
\$3.50 Suits, special at.....\$2.75	25c Suspenders at.....\$1.30	50c Knee Pants at.....\$1.30
\$4.00 Suits, special at.....\$3.15	25c Caps at.....\$1.30	75c Gloves at.....\$1.30
\$4.50 Suits, special at.....\$3.55	50c Stockings at.....\$1.30	75c Underwear at.....\$1.30
\$5.00 Suits, special at.....\$3.95	50c Neckwear at.....\$1.30	\$1.00 Felt Hats at.....\$1.30
\$5.50 Suits, special at.....\$4.35	50c Shirts at.....\$1.30	\$1.25 Underwear at.....\$1.30
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TWENTY YEARS AGO TODAY.

(DO YOU REMEMBER?)

Floods at False Point, near Calcutta, destroyed the lives of 300 persons. Two hundred Peiman Indians left their reservation in the northwest and started on a plundering expedition.

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Gen. John M. Schofield, of the U. S. army, was placed on the retired list, having passed the age limit. Eight men were killed by an explosion, eight miles from Independence, Mo.

Z. C. M. I. reincorporated for a term of 50 years.